IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.625 OF 2007
WITH
CIVIL APPLICATION NO.1131 OF 2007

Ganpat Shidu Bhargude & Ors. .. Appellants.
Vs.
Shankar Vithoba Bhargude & Ors .. Respondents.

Mr.R.S.Apte with Mr.Girish Paryani for the appellants.

CORAM : D.B.BHOSALE, J.

DATED : 1ST OCTOBER, 2007.

P.C.:

. Heard learned counsel for the appellants.

2. The appellants-defendants have challenged the judgments of the courts below by which a suit filed by the respondent-plaintiffs for declaration that the sale deed dated 22.10.2001 executed by defendant nos.1 to 3 in favour of defendant nos.5 to 7 in respect of a well water is illegal and void and that the plaintiffs are the exclusive owners of the said well situated in Gat No.1911. Mr.Apte, learned counsel for the appellants assailed the judgments of the courts below on two grounds. Firstly, he submitted that the suit was hopelessly barred by limitation and on that ground alone the courts below

ought to have dismissed the suit and secondly, he submitted that the documents on record and more particularly an application which was jointly made by the plaintiffs and defendant nos.1 to 3 for loan for digging the well clearly show that defendant nos.1 to 3, through whom defendant nos.5 to 7 claim right in the well water, and plaintiffs have 1/2 share each in the well water, though the well situate in the land Gat No.1911, owned by the plaintiffs.

3. It appears that in 1989, for the first time defendant nos.1 to 3 tried to install electric motor on the disputed well which resulted in initiation of the revenue proceedings which seem to have had concluded sometime in 1999. In November 2001, defendant nos.1 to 3 executed the sale deed in respect of their share in the suit well to the extent of 2 Annas and 8 paise in favour of defendant nos.5 to 8. It is thereafter, according to the plaintiffs, all the defendants started obstructing peaceful enjoyment of the suit well. There is nothing on record to indicate that during the period between 1989 and 1999 either defendant nos.1 to 3 or defendant nos.5 to 7 were fetching water from the disputed well. It is clear from the evidence that the defendants started obstructing peaceful enjoyment of the plaintiffs of the suit well only after

November, 2001. In the circumstances the first submission of Mr.Apte that the suit is hopelessly barred by the limitation must be rejected.

4. Insofar as the second contention is concerned, the courts below have considered the entire evidence on record and have recorded a categoric finding that the documents relied upon by the defendants are not sufficient to establish that they pertain to the well in dispute. The findings of fact recorded by the courts below are entirely based on the evidence on record. No substantial question of law, in my opinion, is either raised or involved in the instant appeal. Hence the second appeal is dismissed. Consequently, the civil application is disposed of.

5. At this stage Mr.Apte, learned counsel for the appellants prayed for stay of this order. The prayer is rejected.

(D.B.BHOSALE, J.)